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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

HENRY POLIN MORALES, JR.,

Defendant and Appellant.

F073383

(Super. Ct. No. BF160921A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Steven M. Katz, Judge.

Cynthia L. Barnes, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and Kevin L. Quade, Deputy Attorneys General, for Plaintiff and Respondent.

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Following the denial of his motion to suppress evidence (Pen. Code, § 1538.5), defendant Henry Polin Morales pled no contest to transportation of methamphetamine (Health & Saf. Code, § 11379, subd. (a)), possession of methamphetamine for sale (*Id.*,

* Before Hill, P.J., Levy, J. and Meehan, J.

§ 11378), misdemeanor possession of smoking paraphernalia (*Id.*, § 11364), misdemeanor driving on a suspended license (Veh. Code, § 14601.2, subd. (a)), and misdemeanor destruction of evidence (Pen. Code, § 135), and admitted he had two prior strike convictions (Pen. Code, §§ 667, subds. (c)–(j), 1170.12, subds. (a)–(e)). In accordance with the plea agreement, the trial court dismissed the prior strike allegations and sentenced defendant to a total prison term of two years. On appeal, defendant’s sole contention is that the court erred in denying his motion to suppress evidence. We reject this contention and affirm the judgment.

FACTS

In July 2015, around 2:15 a.m., California Highway Patrol (CHP) Officer Eric Medrano and his partner were on patrol in the Bakersfield area, when Medrano observed a green Honda that was being driven by defendant.¹ At the time, Medrano was wearing his CHP uniform and driving a clearly marked CHP patrol car.

Medrano was beginning to pass defendant’s car on the right, when he noticed defendant’s passenger flick some ashes from a cigarette he was smoking out the window, an action violating Vehicle Code section 23111. Medrano slowed down to move behind defendant’s car and initiate a traffic stop by activating the emergency lights on his patrol car.

After Medrano activated the emergency lights, defendant slowed down but did not stop. Medrano’s partner then used the patrol car’s public address (PA) system to instruct defendant to stop. When defendant failed to stop and kept driving, Medrano activated his siren and “Code 3” lights, which he described as “[w]hen all the lights are activated— [¶] ... [¶] —on the patrol vehicle pretty much.”

¹ Our factual summary is taken from Medrano’s testimony at the October 1, 2015, hearing on the motion to suppress evidence.

After Medrano activated his siren and Code 3 lights, defendant did not stop but continued driving and made a right turn. The PA system was again used to instruct defendant to stop. Medrano estimated that he followed defendant for a distance of a “little less than a quarter of a mile” and made three attempts to stop defendant before defendant finally stopped.

When defendant stopped his car, he did not pull over to the curb but stopped “within [the] intersection.” Medrano explained that defendant had been about to make a left turn, when Medrano “pulled the patrol vehicle a little bit to [the] left side [of defendant’s car] and then [defendant] stopped.” That was when Medrano and his partner got out of the patrol car and went to contact defendant and his passenger.

As the officers approached defendant’s car, Medrano’s partner instructed defendant and his passenger to put their hands up and they both complied. Medrano then opened the driver’s door and defendant complied with the officer’s instructions to turn off the car and hand him the keys.

After taking the keys and placing them on top of defendant’s car, Medrano grabbed defendant’s left forearm and helped him out of the car. At this time, Medrano had concerns for his own and his partner’s safety. Medrano explained: “People usually stop as soon as the lights come on. They merge to come to a stop.” Medrano further stated: “We assume the driver is not stopping for a reason that they are trying to hide something or it just—we just don’t know.”

Medrano placed defendant’s hands behind his back and handcuffed him. Defendant was cooperative when he was being handcuffed. Medrano conducted a brief patdown search of defendant for weapons but did not find anything. Medrano then had defendant, who was still in handcuffs, sit down on the curb, while he went to “assist [his] partner in having the passenger come out of the vehicle.”

Medrano had been assisting his partner for approximately five seconds when he heard defendant moving. When Medrano turned his head back to look, he saw defendant

“trying to kick a clear plastic bag away from him.” Medrano recognized the bag’s contents to be crystal methamphetamine.

Within a few seconds of seeing defendant kick the bag of methamphetamine, Medrano became aware that his partner had discovered defendant’s passenger had a handgun on him. After helping make sure his partner had the passenger securely restrained, Medrano went to retrieve the bag he had seen defendant kick. Medrano then searched defendant and found another small baggie of crystal methamphetamine.

Medrano searched defendant’s car and found an additional small clear baggie of crystal methamphetamine. He also found a glass pipe and a black case containing a small digital scale inside defendant’s car.

Following defendant’s arrest and transportation to jail, Medrano searched defendant again and found a small black baggie containing crystal methamphetamine.

DISCUSSION

Defendant contends the trial court erred in denying his motion to suppress evidence. In essence, defendant claims that the scope of his detention by Medrano exceeded reasonable bounds and became a de facto arrest requiring probable cause. Defendant argues the court’s determination that there was probable cause to arrest him immediately after the traffic stop is unsupported by the record. As we shall explain, the court properly denied the motion to suppress evidence because, regardless of whether Medrano had probable cause to arrest defendant at that point, the officer certainly had reasonable suspicion to detain defendant, and the detention was not unreasonably long or intrusive, and it was not, as defendant asserts, tantamount to an arrest. Moreover, defendant’s own conduct during the lawful detention provided the CHP officer with probable cause to search defendant and his car.

“When a police officer makes a traffic stop, the driver of the car [and any passengers are] seized within the meaning of the Fourth Amendment.” (*Brendlin v. California* (2007) 551 U.S. 249, 251.) “A detention is reasonable under the Fourth

Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity.” (*People v. Souza* (1994) 9 Cal.4th 224, 231.) “The scope of the detention must be carefully tailored to its underlying justification” (*Florida v. Royer* (1983) 460 U.S. 491, 500), but there is no defined maximum permissible time limit for a traffic stop. The reasonableness of each detention must be assessed in light of its particular circumstances. (*People v. Russell* (2000) 81 Cal.App.4th 96, 102.) Circumstances that develop or are discovered during a stop may create reasonable suspicion sufficient to support prolonging the detention. (*Ibid.*)

When a detention exceeds the boundaries of a permissible investigative stop, the detention becomes a de facto arrest. (*Dunaway v. New York* (1979) 442 U.S. 200, 212.) But “there is no hard and fast line to distinguish permissible investigative detentions from impermissible de facto arrests. Instead, the issue is decided on the facts of each case, with focus on whether the police diligently pursued a means of investigation reasonably designed to dispel or confirm their suspicions quickly, using the least intrusive means reasonably available under the circumstances.” (*In re Carlos M.* (1990) 220 Cal.App.3d 372, 384–385; see *People v. Glaser* (1995) 11 Cal.4th 354, 366 (*Glaser*).)

In reviewing the denial of a motion to suppress evidence, we defer to the trial court’s factual findings where supported by substantial evidence, but exercise our independent judgment to determine whether, under those facts, a search or seizure was reasonable under the Fourth Amendment. (*Glaser, supra*, 11 Cal.4th at p. 362.) Viewed in the light most favorable to the order (*People v. Weaver* (2001) 26 Cal.4th 876, 924), the evidence supports the trial court’s denial of the motion to suppress.

Defendant does not dispute that his passenger’s action of flicking cigarette ashes out the window constituted a Vehicle Code violation for which Medrano could legitimately initiate the traffic stop in this case. Defendant asserts, however, even

assuming the initial traffic stop was legal, Medrano's actions of physically removing him from his car, taking his keys, handcuffing him, patting him down for weapons, and sitting him on the curb transformed his detention in to a de facto arrest without probable cause. Defendant disputes the People's argument that, immediately after the traffic stop, there was probable cause to arrest him for evading a police officer in violation of Vehicle Code section 2800.1.² Emphasizing the short distance he travelled before he stopped his car and Medrano's failure to recommend filing evasion charges against him, defendant asserts that, "the defense in this case correctly argued that [defendant] came to a stop within a reasonable period of time."

Defendant's argument minimizes the more suspicious aspects of his driving behavior that put Medrano on the alert and raised reasonable concerns regarding the CHP officers' safety. As the trial court found, the evidence at the suppression hearing established that, after Medrano activated his emergency lights, defendant slowed down but failed to stop, and, ultimately, Medrano and his partner made three attempts to pull defendant over—by making use of the lights, siren, and PA system on the CHP patrol car—before defendant finally stopped.

Furthermore, Medrano testified that, in his experience, as soon as he turned on his lights, most people would "merge to come to a stop." In contrast, defendant continued driving, made a turn, and was in the process of making another turn, to the left, when Medrano pulled the patrol car up to the left side of defendant's car, at which point defendant came to a stop in the intersection, suggesting defendant finally stopped because

² Vehicle Code section 2800.1 provides, in relevant part: "(a) Any person who, while operating a motor vehicle and with the intent to evade, willfully flees or otherwise attempts to elude a pursuing peace officer's motor vehicle, is guilty of a misdemeanor ... if all of the following conditions exist: [¶] (1) The peace officer's motor vehicle is exhibiting at least one lighted red lamp visible from the front and the person either sees or reasonably should have seen the lamp. [¶] (2) The peace officer's motor vehicle is sounding a siren as may be reasonably necessary. [¶] (3) The peace officer's motor vehicle is distinctively marked. [¶] (4) The peace officer's motor vehicle is operated by a peace officer, ... and that peace officer is wearing a distinctive uniform."

of where Medrano physically positioned the patrol car. There was no evidence that prior to Medrano so positioning the patrol car, defendant ever tried to pull over to the side of the road or otherwise showed any signs of trying to comply with the CHP officers' obvious and multiple attempts to stop his car.

Defendant's driving behavior thus supported a reasonable suspicion that defendant was attempting to evade the CHP patrol car and supported Medrano's decision to detain him immediately after the traffic stop. The fact Medrano handcuffed defendant, frisked him for weapons, and had him sit on the curb does not automatically mean that defendant was arrested instead of lawfully detained. (See *People v. Celis* (2004) 33 Cal.4th 667, 675 [detention when officer drew his gun, handcuffed defendant, and made him sit on ground]; *People v. Soun* (1995) 34 Cal.App.4th 1499, 1517 [detention when large number of officers removed defendant from car at gunpoint, forced him to lie on ground, handcuffed him, and placed in patrol car].) Rather, "we must consider the totality of the circumstances [citation] to determine if the means used by the police ... were justified by the need of a 'reasonably prudent' officer [citation] to protect himself and others involved in the search." (*Glaser, supra*, 11 Cal.4th at p. 366.)

"[D]anger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car." (*Maryland v. Wilson* (1997) 519 U.S. 408, 414.) In light of the presence of a passenger and defendant's evasive driving behavior immediately before the traffic stop, a reasonably prudent officer could have concluded defendant and his passenger might be armed or try to flee. Therefore, the totality of the circumstances justified Medrano's assessment that officer safety concerns necessitated removing defendant from his car, handcuffing him, searching him for weapons, and sitting him on the curb while Medrano briefly went to help his partner remove the passenger from defendant's car. There was no evidence that the detention was unduly prolonged or intrusive; indeed, the evidence indicated Medrano saw

defendant trying to kick a baggie of methamphetamine away from him within seconds of the officer leaving him on the curb.

Under the circumstances, defendant has failed to show that his detention was unreasonably prolonged. (*United States v. Sharpe* (1985) 470 U.S. 675, 686–688 [20-minute investigative detention reasonable under circumstances]; *People v. Hart* (1999) 74 Cal.App.4th 479, 490 [“[t]he privacy protections of the Fourth Amendment must not be construed so as to compromise the safety of those who serve and protect the public”].)

Moreover, as mentioned above, the searches uncovering additional baggies of methamphetamine and drug paraphernalia were not conducted until after Medrano saw defendant trying to kick the first baggie of methamphetamine away from him. Thus, defendant’s own incriminating behavior during his lawful detention (not to mention the contemporaneous discovery of a handgun on defendant’s passenger), not only provided a reasonable suspicion to prolong the detention but also clearly supplied the officer with probable cause to arrest and search defendant and his car, independent of the suspicious circumstances justifying defendant’s initial detention.

DISPOSITION

The judgment is affirmed.